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5 The Honorable MARSHA J. PECHMAN
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PIERCE COUNTY, et al.,

Plaintiffs,

v.

WASHINGTON STATE DEPARTMENT
OF SOCIAL AND HEALTH SERVICES,
et al.,,

Defendants.

NO. 3:23-cv-05775 MJP

DEFENDANTS' ANSWER TO
COMPLAINT FOR DECLARATORY
JUDGMENT, INJUNCTIVE RELIEF,
AND WRIT OF MANDAMUS

The Defendants, the Department of Social and Health Services (DSHS), an executive branch agency of the State of Washington, and Jilma Meneses, in her official capacity as Secretary of Washington State Department of Social and Health Services, through their attorneys, ROBERT W. FERGUSON, Washington State Attorney General, DANIEL J. JUDGE, Senior Counsel, ALEC C. GRAHAM, and DEREK MILLIGAN, Assistant Attorneys General, answer Plaintiffs' Complaint For Declaratory Judgment, Injunctive Relief, and Writ of Mandamus (Dkt No. 1-2) (hereinafter "Complaint"), by admitting, denying and alleging as follows.

I. INTRODUCTION

1. Defendants deny Paragraph 1.
2. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 and therefore deny the same.
3. Paragraph 3 sets forth a legal conclusion which does not require a response.

1 4. Defendants deny Paragraph 4.
2 5. Defendants deny Paragraph 5.
3 6. Defendants deny Paragraph 6.
4 7. Paragraph 7 sets forth a legal conclusion which does not require a response.

5 Defendants deny the remainder of Paragraph 7.

6 8. Defendants deny Paragraph 8.
7 9. Defendants deny Paragraph 9.

8 II. PARTIES

9 10. Defendants are without knowledge or information sufficient to form a belief as to
10 the truth of the allegations contained in Paragraph 10 and therefore deny the same.

11-18. In response to Paragraphs 11-18 of the Complaint, Defendants admit that each
12 listed Plaintiff is a Washington county. Defendants, however, lack sufficient information
13 regarding the population of each county and Plaintiffs' use of the terms "operates" and "political
14 subdivision," and therefore deny the remainder of Paragraphs 11-18.

15 19. Defendants admit that King County is a Washington county. Defendants are
16 without knowledge or information sufficient to form a belief as to the truth of the allegations
17 contained in the remainder of Paragraph 19 and therefore deny the same.

18 20-33. In response to Paragraphs 20-33 of the Complaint, Defendants admit that each
19 listed Plaintiff is a Washington county. Defendants, however, lack sufficient information
20 regarding the population of each county and Plaintiffs' use of the terms "operates," "political
21 subdivision," or "home rule charter" and therefore deny the remainder of Paragraphs 20-33.

22 34. Defendants admit Paragraph 34.

23 III. JURISDICTION AND VENUE

24 35. This Court has jurisdiction over the parties and the subject matter of this suit under
25 28 U.S.C. §1441 and through removal of this matter to this Court under 28 U.S.C. §1441 because
26 Plaintiffs' claim of a clear legal right, an essential element to their claims of injunctive and

1 declaratory relief, is governed by federal constitutional law as applied and enforced in the Orders
2 in *Trueblood v. DSHS*, No. 14-cv-00178-MJP (W.D. Wash.). This Court also has supplemental
3 jurisdiction under 28 U.S.C. § 1337(a) over Plaintiffs' state claims sharing a common nucleus of
4 operative fact with the federal issues herein. Defendants deny the remainder of Paragraph 35.

5 36. This Complaint was filed in Pierce County Superior Court prior to removal.
6 Therefore, venue in the Western District of Washington is proper. Defendants deny the remainder
7 of Paragraph 36.

8 IV. STANDING

9 37. Paragraph 37 sets forth a legal conclusion which does not require a response.
10 Without waiving objection, Defendants deny Paragraph 37.

11 38. Paragraph 38 sets forth a legal conclusion which does not require a response.
12 Without waiving objection, Defendants deny Paragraph 38.

13 39. Defendants deny Paragraph 39.

14 40. Defendants deny Paragraph 40.

15 V. ALLEGED STATEMENT OF FACTS

16 A. The Civil Conversion Process

17 41. Paragraph 41 sets forth a legal conclusion which does not require a response.
18 Without waiving objection, Wash. Rev. Code § 10.77.086 speaks for itself.

19 42. Paragraph 42 sets forth a legal conclusion which does not require a response.
20 Without waiving objection, Defendants deny Paragraph 42.

21 43. Defendants admit Paragraph 43.

22 44. Defendants deny Paragraph 44.

23 45. Defendants admit that on December 14, 2022, DSHS Deputy Secretary Kevin
24 Bovenkamp sent written communications to recipients, including counties, regarding the
25 Department's forthcoming steps to comply with this Court's orders in *Trueblood v. DSHS*,
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1 No. 14-cv-00178-MJP (W.D. Wash.). That written communication speaks for itself. Defendants
2 deny the remainder of Paragraph 45.

3 46. Defendants deny Paragraph 46.

4 47. Defendants admit that DSHS engaged in written communication regarding certain
5 persons denied admission to state hospital, including reference to DCR services, and that those
6 written communications speak for themselves. Defendants deny the remainder of Paragraph 47.

7 48. Regarding Paragraph 48, Defendants admit the Superior Court entered orders in
8 Mr. Holland's case that speak for themselves. Defendants are without knowledge or information
9 sufficient to form a belief as to the truth of the allegations contained in the remainder of
10 Paragraph 48 and therefore deny the same.

11 49. Regarding Paragraph 49, Defendants admit the King County Superior Court
12 entered orders in *State v. Holland*, No. 22-1-04244-0 which speak for themselves. Defendants
13 also admit that DSHS was present through counsel from the Attorney General's Office during
14 one of the hearings in this matter. Defendants deny the remainder of Paragraph 49.

15 50. Defendants are without knowledge or information sufficient to form a belief as to
16 the truth of the allegations contained in Paragraph 50 and therefore deny the same.

17 51. Defendants admit that on January 12, 2023, the Washington State Superior Court
18 Judges' Association (SCJA) sent written communication responsive to Mr. Bovenkamp's written
19 communication dated December 14, 2023. SCJA's written communication to DSHS speaks for
20 itself. Defendants deny the remainder of Paragraph 51.

21 52. Regarding Paragraph 52. Defendants admit that this Court on July 7, 2023 entered
22 Findings of Fact, Conclusions of Law and Order ("Order") on Plaintiffs' Motion for Material
23 Breach of Contempt Settlement Agreement in the *Trueblood* matter following evidentiary hearing
24 before this Court on June 12-15, 2023. Defendants further admit the July 7 Order was amended
25 or revised by this Court's August 14, 2023 Order. These Orders speaks for themselves.
26 Defendants deny the remainder of Paragraph 52.

1 53. Defendants deny Paragraph 53.

2 54. Regarding Paragraph 54, Defendants admit that, since July 7, DSHS sent written
3 communication to counties regarding its inability to admit patients under the *Trueblood* Orders
4 entered on July 7, 2023 and on August 14, 2023. Defendants deny the remainder of Paragraph 54.

5 55. Defendants deny Paragraph 55.

6 56. Defendants deny Paragraph 56.

7 **B. DSHS'S Notice**

8 57. Paragraph 57 sets forth a legal conclusion which does not require a response.
9 Without waiving objection, Wash. Rev. Code § 71.05.410 speaks for itself.

10 58. Paragraph 58 sets forth a legal conclusion which does not require a response.
11 Without waiving objection, Wash. Rev. Code § 71.05.425 speaks for itself.

12 59. Regarding Paragraph 59, Defendants admit that since July 7, DSHS sent written
13 communication to counties regarding its intent to comply with the *Trueblood* Orders, including
14 transfer or relocation of patients in state hospitals. Defendants deny the remainder of
15 Paragraph 59.

16 60. Defendants deny Paragraph 60.

17 **VI. ALLEGED CAUSES OF ACTION**

18 **A. FIRST ALLEGED CAUSE OF ACTION: DECLARATORY JUDGMENT**

19 61. Defendants repeat their foregoing answers to Plaintiffs' allegations as though fully
20 set forth herein.

21 62. Defendants deny Paragraph 62.

22 63. Defendants deny Paragraph 63.

23 64. Defendants deny Paragraph 64.

24 65. Defendants deny Paragraph 65.

25 66. Defendants deny Paragraph 66.

1 **B. SECOND ALLEGED CAUSE OF ACTION: INJUNCTIVE RELIEF**

2 67. Defendants repeat their foregoing answers to Plaintiffs' allegations as though fully
3 set forth herein.

4 68. Defendants deny Paragraph 68.

5 69. Defendants deny Paragraph 69.

6 **C. THIRD ALLEGED ALTERNATIVE CAUSE OF ACTION: WRIT OF
7 MANDAMUS**

8 70. Defendants repeat their foregoing answers to Plaintiffs' allegations as though fully
9 set forth herein.

10 71. Defendants deny Paragraph 71.

11 72. Defendants deny Paragraph 72.

12 73. Defendants deny Paragraph 73.

13 74. Defendants deny Paragraph 74.

14 75. Defendants deny Paragraph 75.

15 76. Defendants deny Paragraph 76.

16 **VII. PRAYER FOR RELIEF**

17 Defendants deny that Plaintiffs are entitled to any relief as set forth in their Prayer for
18 Relief.

19 Defendants deny all allegation contained in the Complaint unless expressly admitted
20 above.

21 **VIII. AFFIRMATIVE DEFENSES**

22 Having answered the allegations of Plaintiffs' complaint, and by way of further answer,
23 Defendants assert the following affirmative defenses:

24 1. Plaintiffs fail to state a claim entitling them to relief.

25 2. Plaintiffs' claims for equitable relief are barred in whole or in part by laches.

26 3. Plaintiffs' claims for equitable relief are barred by unclean hands.

1 4. Plaintiffs have caused the circumstances of which they now complain. Therefore
2 their claims for equitable relief will not lie.

3 5. Plaintiffs have failed to exhaust administrative or other available remedies prior to
4 bringing this action.

5 6. Plaintiffs have failed to join an indispensable party: Disability Rights Washington.
6 Therefore this action will not lie.

7 7. Defendants' actions, herein alleged as bases for declaratory, injunctive, and
8 mandamus relief, manifest a reasonable exercise of judgment and discretion by authorized public
9 officials made in the exercise of governmental authority entrusted to them by law and are not
10 actionable.

11 8. This action should be removed to federal court under 28 U.S.C. §1441 because
12 Plaintiffs' claim of a clear legal right, an essential element to their claims of injunctive and
13 declaratory relief, is governed by federal constitutional law as applied and enforced in the
14 *Trueblood* Orders.

15 9. This Court should also assert subject matter supplemental jurisdiction under
16 28 U.S.C. § 1337(a) under 28 U.S.C. §1337(a) over Plaintiffs' state claims sharing a common
17 nucleus of operative fact with the federal issues herein.

18 10. Defendants' complained-of actions in this matter were taken to comply with the
19 *Trueblood* Orders.

20 11. Plaintiffs' claims are barred by Wash. Rev. Code §71.05.026.

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IX. CONCLUSION

Wherefore, having fully answered Plaintiffs' Complaint and alleging or making affirmative defenses, Defendants respectfully request that Plaintiffs' Complaint be dismissed, that they take no relief thereby, and that Defendants be awarded their costs, including attorney fees.

RESPECTFULLY SUBMITTED this 13th day of September, 2023.

ROBERT W. FERGUSON
Attorney General

s/ Daniel J. Judge
DANIEL J. JUDGE, WSBA No. 17392
Senior Counsel
ALEC C. GRAHAM, WSBA No. 56590
DEREK MILLIGAN, WSBA No. 59651
Assistant Attorneys General

Attorneys for Defendants

CERTIFICATE OF SERVICE

I, *Daniel J. Judge*, state and declare as follows:

I am a citizen of the United States of America and over the age of 18 years and I am competent to testify to the matters set forth herein. I hereby certify that on this 13th day of September 2023, I caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Paul J. Lawrence, WSBA No. 13557
Ian D. Rogers, WSBA No. 46584
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In addition, a copy of this document and any attachments has been e-mailed and mailed to the following parties who are not CM/ECF participants via US Mail, postage prepaid:

Marcus Miller
Pierce County Prosecuting Attorney's Office
930 Tacoma Ave S Rm 946
Tacoma, WA 98402-2171
marcus.miller@piercecountywa.gov

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated this 13th day of September 2023.

s/*Daniel J. Judge*
DANIEL J. JUDGE
Senior Counsel